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PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT  
(PCT Article 36 and Rule 70)

REC'D 03 DEC 2004

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Applicant's or agent's file reference 70102	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA416)	
International application No. PCT/EP 03/08057	International filing date (day/month/year) 23.07.2003	Priority date (day/month/year) 24.07.2002
International Patent Classification (IPC) or both national classification and IPC C07C235/38		
Applicant SYNGENTA PARTICIPATIONS AG et al		

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 5 sheets, including this cover sheet.  
  
☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.18 and Section 607 of the Administrative Instructions under the PCT).  
 These annexes consist of a total of 35 sheets.

- This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand  28.01.2004	Date of completion of this report  02.12.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tlx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Seufert, G Telephone No. +49 89 2399-8330



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/08057**

**I. Basis of the report**

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

**Description, Pages**

1-8

received on 21.09.2004 with letter of 15.09.2004

**Claims, Numbers**

7-15

received on 28.01.2004 with letter of 10.01.2004

1-6

received on 21.09.2004 with letter of 15.09.2004

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

see separate sheet

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6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1, 2 4-15
	No: Claims	
Inventive step (IS)	Yes: Claims	1,2, 4-15
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1, 2, 4-15
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

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EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/08057

Reference is made to the following document:

D1 WO-A-041998

**I. Basis of the report**

Amended claim 3 is not considered to be supported by the application as originally filed (Rule 70.2c PCT). With regard to the definitions for the variables  $R_4$  and  $R_5$  ( $R_5$  is already defined in claim 1) original claim 4 has been considered as the basis for the amended claim 3. However, in the original claim 4, these variables have been disclosed in combination with specific definitions for the variables  $R_1$ ,  $R_2$  and  $R_3$ . These definitions have been omitted in the amended claim 3 thus creating unsupported subject-matter.

For the purpose of this communication amended claim 3 has therefore been disregarded.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability**

**Novelty**

The present application refers to compounds of the general formula (I) (claim 1), methods for their preparation (claims 10-12), compositions comprising them (claim 13) and their use in the control of phytopathogenic microorganisms (claims 14-15).

None of the available prior art documents discloses a compound which falls within the scope of claim 1. Thus, claim 1 as well as the dependent claims 2-9 and the claims 10-15 appear to meet the requirements of Art. 33(2) PCT.

**Inventive step**

Document D1, which may be considered as the most relevant state of the art document, discloses propargyl ether with a similar structure for the same use as presently claimed, i.e. compounds useful in controlling and protecting against phytopathogenic microorganisms. The compounds of the present application are distinguished from the compounds of D1 insofar as the group  $-CR_5R_6-CR_7R_8-$  (D1)

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has been changed to a 1,2-cyclohexylidene or 1,2-cyclopropylidene bridge.

The technical problem underlying the present application may therefore be considered as providing further compounds useful in controlling and protecting against phytopathogenic microorganisms.

None of the available prior art documents gives an indication to the man skilled art that would motivate him to change the prior art compounds of D1 in such a way as to arrive at the presently claimed compounds. It was also not obvious that such a change would still result in compounds having the desired activity. The subject-matter of the claims may therefore be considered as involving an inventive step (Art. 33(3) PCT).

**Industrial applicability**

There are no objections against the industrial applicability of the presently claimed subject-matter.

**Further remarks:**

The amendment that  $R_5$  in the amended claim 7 (10.01.04) is propargyl has been made by erroneously. It has been understood that the variable  $R_5$  should be propargyl and the variable  $R_6$  is hydrogen (see original claim 7).

In view of the amended claims the description has also been amended. Pages 1-8 of the description from 15.09.2004 were introduced to substitute pages 1-11 of the description from 10.01.04. It is clear, however, that pages 1-8 of 15.09.04 replace also page 12 of 15.09.04. This page is therefore considered to be superfluous.